

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1516 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE BANK OF SAURASHTRA

Versus

BOMBAY HARDWARE THRO'PROP. JASWANATH GIRI KAILASH GIRI

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Appearance:

MR AS VAKIL for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1

Though served, nobody for Respondent No. 2, 3

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 26/11/96

ORAL JUDGEMENT

This Revision Application has been filed by the petitioner-bank which had filed Special Civil Suit No. 135 of 1985 in the Court of Civil Judge (Senior Division), Junagadh which was subsequently transferred to the Court of Civil Judge (Senior Division), Veraval and renumbered as Special Civil Suit No. 197 of 1989 and subsequently it was transferred to the Court of Civil

Judge (Junior Division), Una and renumbered as Civil Suit No. 267 of 1993. On 11th April, 1996 when the case was listed for recording evidence, neither the petitioner-plaintiff nor its advocate was present and, therefore, the suit was dismissed.

Being aggrieved by the order of dismissal dated 11th April, 1994, an application for restoration being Civil Misc. Application No. 12/94 was filed by the petitioner-plaintiff. In the said application, notice was issued and on the returnable date as neither the plaintiff nor its advocate was present, the said application for restoration was also dismissed on 2nd December, 1994.

In the above referred circumstances, the plaintiff-petitioner filed another application being Civil Misc. Application No. 6/95 for restoration of Civil Misc. Application No. 12/94. Civil Misc. Application No. 6/95 was ultimately rejected by the Civil Judge (Junior Division), Una.

Being aggrieved by the above referred order dated 8th August, 1996, the present petitioner-plaintiff has approached this Court. Learned advocate Mr Apurva Vakil has appeared for the petitioner-plaintiff and learned advocate Ms Sejal Mandavia has appeared for respondent No. 1. Respondents No. 2 and 3 though served have not appeared.

Learned advocate Mr Vakil has submitted that looking to the fact that Civil Misc. Application No. 6/95 was filed within the period of limitation from the date on which the learned advocate came to know about dismissal of the earlier restoration application, the trial Court ought to have granted the second restoration application. It has been submitted by Mr Vakil that though Civil Misc. Application No. 12/94 was rejected on 2nd December, 1994, the advocate appearing for the plaintiff came to know about the said dismissal on 23.12.1994. Civil Misc. Application No. 6/95 for restoration of Civil Misc. Application No. 12/94 was filed on 21.1.1995. Thus, it has been submitted by him that the said application was filed within a period of 30 days from the date on which the advocate came to know about the dismissal. It has been submitted by Mr Vakil that the period of limitation would run against the plaintiff in such a case from the date on which the advocate came to know about rejection of the earlier application and as the restoration application was filed within the period of limitation, it was not necessary to

give any reason.

It has further been submitted by Mr Vakil that assuming without admitting that there was some delay in filing the restoration application, the reason was duly stated in para 2 of the restoration application. Thus, learned advocate Mr Vakil has submitted that in the interest of justice, the restoration application ought not to have been rejected. He has further submitted that the trial Court had not exercised jurisdiction vested in it and thereby injustice has been caused to the plaintiff-petitioner and, therefore, in the interest of justice the revision application should be allowed.

On the other hand, learned advocate Ms Sejal Mandavia has submitted that only on account of default and negligence of the lawyer of the plaintiff-petitioner, the suit could not proceed at the time when it was notified for recording evidence. She has further submitted that even the application for restoration of the suit was rejected as the advocate appearing for the plaintiff was not present at the time of hearing. According to submission made by Ms Mandavia, there was gross negligence on the part of the advocate and, therefore, the trial Court had rightly rejected the application. She has submitted that the impugned order is just and legal and, therefore, this Court should not interfere with the said order.

It is true that there was some negligence on the part of the advocate appearing for the plaintiff-bank but in the interest of justice it would be just and proper if this revision application is granted because it would not be proper to penalise the plaintiff-bank for the negligence shown by the lawyer.

Looking to the facts and circumstances of the case, the impugned order dated 8th August, 1996 passed below Exh. 1 in Civil Misc. Application No. 6/95 is hereby quashed and set aside and it is directed that Civil Misc. Application No. 12/94 shall be heard as expeditiously as possible by the trial Court. Rule is made absolute.

Looking to the facts of the case, I think that justice would be done to the concerned parties if sufficient amount of costs is awarded to respondent No. 1. In the circumstances, costs to the tune of Rs.2,000/- (Rupees Two thousand only) shall be awarded to respondent No. 1. The amount of costs shall be deposited with this Court on or before 31st January, 1997 and it would be

open to Respondent No. 1 or his advocate to withdraw the same.

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